

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

James T. Sutton, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

**Civil Action 2:19-cv-4652
Judge George C. Smith
Magistrate Judge
Kimberly A. Jolson**

APEX ENVIRONMENTAL, LLC,

Defendant.

RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on 2/6/20 and was attended by:

Laura L. Sheets, counsel for plaintiff(s) James T. Sutton, et al _____,
Matthew Z. Robb, counsel for plaintiff(s) James T. Sutton, et al _____,
Kevin P. Foley, counsel for defendant(s) Apex Environmental LLC,
_____, counsel for defendant(s) _____,

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

1. **CONSENT TO MAGISTRATE JUDGE**

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)?

_____ Yes X No

2. **INITIAL DISCLOSURES**

Have the parties agreed to make initial disclosures?

_____ Yes X No _____ The proceeding is exempt under Rule 26(a)(1)(B)

If yes, such initial disclosures shall be made by 3.20.20 .

3. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

 X Yes No

If yes, describe the issue:

No diversity Jurisdiction

If yes, the parties agree that any motion related to venue or jurisdiction shall be filed by 3.20.20 .

4. PARTIES AND PLEADINGS

- a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed by 6.1.20 .
- b. If the case is a class action, the parties agree that the motion for class certification shall be filed By 2/6/21 .

5. MOTIONS

- a. Are there any pending motion(s)?

 Yes X No

If yes, indicate which party filed the motion(s), and identify the motion(s) by name and docket number:

- b. Are the parties requesting expedited briefing on the pending motion(s)?

 Yes X No

If yes, identify the proposed expedited schedule:

Opposition to be filed by ; Reply brief to be filed by .

6. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand:

This matter is a putative class action brought by Plaintiff, James T. Sutton on behalf of himself and all others similarly situated, asserting claims for negligence, gross negligence, and nuisance against

Defendant, Apex Environmental LLC. Plaintiffs allege that Defendant negligently and improperly constructed, and/or maintained and/or operated its landfill located at 11 County Road 78, Amsterdam, Ohio. such that it has caused the invasion of noxious odors onto Plaintiff's home, land, and property on occasions too numerous to mention. Plaintiff has submitted a jury demand.

Defendant denies plaintiffs' claims and believes there is not a sufficient basis for a class action including but not limited to the fact some alleged plaintiffs already settled with defendant in a prior lawsuit.

7. DISCOVERY PROCEDURES

- a. The parties agree that class certification discovery shall be completed by 2/6/21. The to schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and to file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so. If the parties are unable to reach an agreement on any matter related to discovery, they are directed to arrange a conference with the Court. To initiate a telephone conference, counsel are directed to join together on one line and then call the Magistrate Judge's chambers or provide the Court with a call -in number.

- b. Do the parties anticipate the production of ESI? ☒ Yes _____ No

If yes, describe the protocol for such production: A proposed protocol will be submitted if ESI becomes an issue.

- c. Do the parties intend to seek a protective order or clawback agreement?

If yes, such order or agreement shall be produced to the Court by _____.

8. DISPOSITIVE MOTIONS

- a. Any dispositive motions shall be filed by 2.6.21.

- b. Are the parties requesting expedited briefing on dispositive motions?

_____ Yes ☒ No

If yes, identify the proposed expedited schedule:

Opposition to be filed by 3.1.21 ; Reply brief to be filed by 3.15.21.

9. EXPERT TESTIMONY

- a. Plaintiff's expert reports related to issues of class certification must be produced by 7/1/20. Defendant's expert reports related to issues of class certification must be produced by 10/1/20.

b. Rebuttal expert reports must be produced by 11/1/20.

10. SETTLEMENT

Plaintiff(s) will make a settlement demand by 7.1.20. Defendant will respond by 11.1.20. The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference. The Court refers cases to settlement throughout the year. The parties request the following month and year:

February 2021

In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the settlement conference. The parties understand that they will be expected to comply fully with the settlement conference orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

11. RULE 16 PRETRIAL CONFERENCE

Do the parties request a scheduling conference?

X Yes, the parties would like a conference with the Court prior to it issuing a scheduling order. The parties request that the conference take place by telephone.

 No, a conference is not necessary; the Court may issue a scheduling order after considering this Report.

12. OTHER MATTERS

Indicate any other matters for the Court's consideration: The Parties agree that discovery shall be bifurcated and that the first phase of discovery under the initial scheduling and discovery order shall be directed to class certification issues under Fed. R. Civ. P. Rule 23. The second phase of discovery will focus on liability and damages.

Signatures:

Attorney for Plaintiff(s):

/s/ Daniel P. Petrov
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Attorney for Defendant(s):

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and

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*Pro Hac Vice Attorneys for Plaintiff and the
Putative Class*

Date: February 20, 2020